

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: BPS DIRECT, LLC, AND
CABELA'S, LLC, WIRETAPPING**

: MDL 3074
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: E.D.Pa. ACTION NOS.:
: 23-md-3074
: 22-cv-4709
: 23-cv-2282
: 23-cv-2287
: 23-cv-2293
: 23-cv-2294
: 23-cv-2295
: 23-cv-2306
: 23-cv-2338
: 23-cv-4008

ORDER

AND NOW, this 29th day of November 2023, upon reviewing Plaintiffs' Response (ECF No. 83) to our November 17, 2023 Order (ECF No. 81) reporting all counsel agree to the appointment of the Honorable Thomas I. Vanaskie (Ret.) to serve as a Special Discovery Master, finding good cause, and the agreed master confirming no ground to us warranting disqualification, it is ORDERED:

1. We appoint the Honorable Thomas I. Vanaskie, retired Judge of the United States Court of Appeals and retired Chief Judge of the United States District Court for the Middle District of Pennsylvania as the designated Special Discovery Master under Federal Rule of Civil Procedure 53 for purposes of promptly resolving all discovery disputes between the parties with us addressing all requests for relief involving the sealing of filed documents or for dispositive relief.

2. The parties shall work diligently and cooperatively with Judge Vanaskie towards resolving all discovery issues:

- a. Discovery relief shall continue to comply with Federal Rule 7 and our Policies by filing the materials on the docket;
- b. The movant shall also email the compliant motion papers and timely responses (including unredacted copies of materials filed under seal with our approval) to Judge Vanaskie with a copy to all counsel at thomas.vanaskie@stevenslee.com contemporaneous with each filing, and shall ask as to next steps including whether Judge Vanaskie would benefit from a telephone or in-person conference to resolve the motion;
- c. Plaintiffs' counsel is granted leave, for example, to contact Judge Vanaskie with all counsel's consent after **December 11, 2023** seeking the Judge's guidance on the next steps in resolving the discovery concerns regarding the production of session data detailed in paragraph 2 of our November 17, 2023 Order (ECF No. 81) mindful of the parties' ongoing discovery obligations consistent with our Orders (ECF Nos. 52, 81, 82);
- d. Judge Vanaskie shall promptly decide discovery motions and email his recommended orders, with reasoning as appropriate, to our Chambers (chambers_of_judge_kearney@paed.uscourts.gov) for our filing as a Notice of Recommended Order;
- e. The parties may file objections not exceeding five pages to Judge Vanaskie's recommended order within forty-eight hours of the filing of the Notice of Recommended Order, with objections due over a weekend or federal holiday filed the next business day before Noon;
- f. Judge Vanaskie's telephonic rulings during a deposition shall be transcribed by the present court reporter and be immediately effective at deposition subject to concise objections timely filed within forty-eight hours after the deposition;

g. Judge Vanaskie shall retain electronic copies of all materials sent to him and create a contemporaneous record of his time invested in his service to the parties;

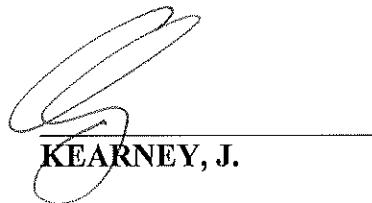
h. Judge Vanaskie need not have the proceedings transcribed before him but nothing in this Order precludes a party from arranging a third-party court reporter who will provide Judge Vanaskie an expedited copy of the transcript of a proceeding;

3. The parties may not communicate *ex parte* with Judge Vanaskie unless the parties seek our approval to expand Judge Vanaskie's role to include case resolution discussions;

4. A party seeking discovery from a third-party shall attach this Order to the third party discovery request;

5. The parties shall each pay fifty percent (50%) of Judge Vanaskie's customary hourly rate and his reasonable costs as customarily billed by his law firm within thirty days of billing; and,

6. Judge Vanaskie may reallocate responsibility for timely payment of his contemporaneous hourly fees and reasonable costs in his discretion including among third parties as necessary and tailored to address demonstrated discovery abuses or delay tactics consistent with the Federal Rules of Civil Procedure.



KEARNEY, J.